Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the	)	MM Docket 92-259
Cable Television Consumer	)	
Protection and Competition	)	
Act of 1992	)	
	)	
Broadcast Signal Carriage Issues	)	

Comments of

LIBERTY CABLE COMPANY, INC.

HENRY M. RIVERA
EDWIN LAVERGNE
Ginsburg, Feldman and Bress
Chartered
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 637-9012

W. JAMES MacNAUGHTON
90 Woodbridge Center Drive
Suite 610
Woodbridge, New Jersey 07095
(908) 634-3700

Its Attorneys

January 4, 1993

TABLE OF CONTENTS

SUMMARY i

INTRODUCTION 1

I. SMATV Systems Are Included Within The Definition Of "Multichannel Video Programming Distributor" 2

A. SMATV Systems Are Multichannel Video Programming Distributors Under The Plain Wording Of The Cable Act. 2

B. The Senate And House Reports Associated With The Act Support Inclusion Of SMATV Systems As MVPDs. . 3

C. Inclusion Of SMATV Systems Within The Definition Of MVPD Is Consistent With The Purpose Of The Act. . . 4

D. Congress Intended The Benefits Of The Act To Apply To All Present and Future Technologies That Could Potentially Compete With Cable. 5

II. Master Antenna Television Systems Are Not Multichannel Video Programming Distributors 6

A. MATV Systems Should Not Come Within The Scope Of The MVPD Definition So Long As The MATV System Is Providing Only Local Broadcast Signals. 6

B. The Use Of MATV Facilities By SMATV Operators To Deliver Local Broadcast Signals Is Not "Retransmission." 8

C. If MATV Systems Are Exempt From the Retransmission Consent Obligations Of The Act, SMATV Operators Using MATV Facilities Should Also Be Exempt. . . . 9

D. SMATV Operators Have Strong Incentives To Provide Access To Broadcast Stations Because SMATV Operators Do Not Compete With Broadcasters And Need Broadcast Signals To Be Competitive With Cable. . . 10

E. Summary And Alternative Solutions. 12

III. Retransmission Consent Should Not Apply To Radio Stations And Superstations 14

EXHIBIT 1 - Affidavit Of Peter O. Price 16

SUMMARY

Liberty Cable Company, Inc. ("Liberty") is a satellite master antenna television ("SMATV") operator currently competing with Time Warner, Inc. in New York City.

Liberty believes that SMATV systems are included within the definition of multi-channel video programming distributors ("MVPD") under the new Cable Act ("the Act") because: (1) the plain wording of the Act includes SMATV systems; (2) the Senate report on S-12 specifically included SMATV systems as an example of a MVPD; (3) the two purposes of the Act -- to stimulate diversity of information services to the public and competition to cable -- are furthered by a broad reading of the definition of MVPD; and, (4) Congress intended the Act to be applied not only to present but also future technologies.

Master antenna television systems ("MATV") are not multi-channel programming distributors so long as such systems are only providing access to local broadcast signals. Therefore, MATV systems should not be required to obtain retransmission consent from local broadcasters to carry their signals. Moreover, the use of MATV facilities by SMATV operators to deliver local broadcast signals is not "retransmission" within the meaning of the Act such that a retransmission consent obligation is imposed on SMATV operators.

The obligation to obtain retransmission consent should not apply to radio signals. The obligation to obtain retransmission consent should not apply to any superstation carried by any MVPD prior to May 1, 1991. Any other approach makes the classification of superstations exempt from the retransmission consent requirement an ad hoc and arbitrary determination and results in an unequal treatment of otherwise equal MVPDs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-259
	)	
Broadcast Signal Carriage Issues	)	

Liberty Cable Company, Inc. ("Liberty"), by its attorneys, hereby submits its comments in response to the above-referenced Notice of Proposed Rulemaking ("Notice") which was released on November 19, 1992.

INTRODUCTION

1. Liberty is a satellite master antenna television ("SMATV") operator currently serving approximately 7,000 subscribers at dozens of sites in the New York metropolitan area. Liberty has built the largest 18 GHz network in the United States and is a pioneer in the use of 18 GHz microwave equipment to redistribute its signal.

2. Liberty is one of the few SMATV companies in the country that is successfully overbuilding and competing with a local cable

company.[1/] Liberty will be one of the first programmers in the United States to use "video dialtone" facilities provided by a local exchange company.

3. Liberty's Comments focus on the (i) inclusion of SMATV systems within the MVPD definition; (ii) exclusion of MATV systems from the MVPD definition; (iii) exclusion of SMATV operators who deliver broadcast signals to the residents of multifamily buildings using MATV facilities from the retransmission consent requirements of the Act; and (v) issues surrounding superstation and radio signal retransmission consent.

I. SMATV SYSTEMS ARE INCLUDED WITHIN THE DEFINITION OF "MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR."

A. SMATV Systems Are Multichannel Video Programming Distributors Under The Plain Wording Of The Cable Act.

4. The Commission has asked for comments on the scope of the definition of "Multichannel Video Programming Distributor" ("MVPD").[2/] MVPD is defined in the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") to include "a television receive-only satellite program distributor, who makes

---

[1/] Liberty's franchised competitor in New York is Time Warner, Inc., which does business in Manhattan as Manhattan Cable Television and Paragon Cable Manhattan. In the outer boroughs of New York, Time Warner does business as B-Q Cable, QUICS and Staten Island Cable.

[2/] See, Notice at para. 42.

available for purchase, by subscribers or customers, multiple channels of video programming."[3/]

5. Even if the words "receive-only satellite program distributor" were not present, the definition would include SMATV systems because the definition is not intended to be restrictive. Rather, the use of the words "a person such as, but not limited to" in Section 2(c)(6) of the Act, make clear that Congress intended to include within the MVPD definition all entities that meet the criteria of making "available for purchase, by subscribers or customers, multiple channels of video programming." These are the operative words of the definition; these are the words that would include SMATV systems which charge subscribers for their service.

B. The Senate And House Reports Associated With The Act Support Inclusion Of SMATV Systems As MVPDs.

6. Congress' intent to include SMATV systems within the definition of MVPD is absolutely clear. The Senate Report on S-12 states that:

[3/] See, 47 U.S.C. § 2(c)(b)(1992), which states: "the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." SMATV systems, like television receive-only systems, also make available, for subscriber purchase, multiple channels of video programming. Therefore, under the plain language of the Act, SMATV systems fall within the definition of MVPD.

> The term multichannel video programming distributor means a person who makes available for purchase, by subscribers or customers, multiple channels of video programming . . . . Examples of multichannel video programming distributors include wireless cable and satellite master antenna television." (Emphasis added).[4/]

7. The operative words of the House Report are equally enlightening. Like the Senate, the House defined a MVPD as "a person who makes available for purchase, by subscribers or customers, multiple channels of video programming."[5/] Thus, the Commission should be more inclusive in terms of what video delivery technologies are encompassed within the definition (as was obviously intended by the Congress), not less inclusive.[6/]

C. Inclusion Of SMATV Systems Within The Definition Of MVPD Is Consistent With The Purpose Of The Act.

8. Two of the purposes of the Act were to promote the availability to the public of a diversity of views and information through, and to increase competition in, the multichannel video programming market.[7/] These objectives can only be achieved if the Act (and the MVPD definition) is interpreted broadly.

[4/] S. Rep. No. 12, 102d Cong., 2d Sess. 71 (1992).

[5/] H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 79 (1992).

[6/] See, Pennsylvania Human Relations Commission v. Alto-Reste Park Cemetary Association, 453 Pa. 124, 306 A.2d 881 (1973), which holds that the statutory term "include" is a word of enlargement and not limitation. See also, Pappas v. FCC, 807 F.2d 1019, 1024 (D.C. Cir. 1986).

[7/] 47 U.S.C. §628(a). See also 47 U.S.C. § 2(b)(1).

9. For example, Section 19 of the Act is designed to stimulate diversity of information sources to the public and competition to cable by ensuring that cable systems do not cut off the supply of programming to their competitors. The protections afforded by Section 19 are available only to MVPDs; therefore, the Commission must give the broadest possible interpretation to the MVPD definition if the Commission is to ensure that the Congressional goal of stimulating competition is achieved. Conversely, a crimped reading of the definition of MVPD will frustrate Congressional desires.[8/]

D. Congress Intended The Benefits Of The Act To Apply To All Present and Future Technologies That Could Potentially Compete With Cable.

10. While Liberty has made some progress in its efforts to compete with local cable companies, it has been an uphill battle, and other SMATV systems have been less successful. A restrictive reading of the MVPD definition threatens Congress' objective of promoting competition in the multichannel video marketplace because it would exclude technologies that have the potential of competing

---

[8/] Liberty President, Peter Price, recently discussed how important Section 19 will be in achieving a pro-competitive environment in the multichannel video marketplace. See, Affidavit of Peter O. Price of Amicus Curiae Liberty Cable Co., Inc., Turner Broadcasting System, Inc. v. FCC, No. 92-2247, et al. (D.D.C. Dec. 18, 1992), attached hereto as Exhibit 1. Others have also demonstrated the need for Section 19 in dealing with the abuses of the cable industry. See, Generally, National Rural Telecommunications Cooperatives Opposition to Plaintiff's Motion for Preliminary Injunction, Turner Broadcasting System, Inc. v. FCC, No. 92-2494 (D.D.C. Dec. 18, 1992).

with cable, but have yet to develop or prove themselves to be commercially viable.

11. Congress recognized the dynamic nature of the communications industry and intended to foster new technologies.[9/] Congress did not intend the MVPD definition to be a static one.

12. By crafting a broad definition of MVPD, Congress intended to extend the protections of the Act to new technologies without having to amend the Act each time a new technology is developed.[10/] If new technologies "make available for purchase, by subscribers or customers, multiple channels of video programming," they have the potential to compete with cable systems; it is clear that the benefits of the Act should apply to them.

9/ 47 U.S.C. § 628(a) (1992).

10/ Likewise, Congress did not intend to have to amend the Act each time existing services have their names changed by regulatory authorities. Existing services could acquire additional attributes which do not alter the essence of the service provided but which could make their current monikers not as descriptive as they might otherwise be. Therefore, regulators may see fit to alter the current names of those services. It cannot be argued that if, for example, the direct broadcast satellite service (specifically mentioned in the Act) is called by regulators "direct narrowcast satellite and fiber service," Congress must amend the Act before this service is covered by the Act.

II. Master Antenna Television Systems Are Not Multichannel Video Programming Distributors.

A. MATV Systems Should Not Come Within The Scope Of The MVPD Definition So Long As The MATV System Is Providing Only Local Broadcast Signals.

13. The Commission has asked for comments on whether a "master antenna television system" ("MATV") is within the scope of the MVPD definition[11/]. An MATV should not come within the scope of the MVPD definition so long as the MATV is providing only local broadcast signals to the residents of multifamily properties.[12/] This is consistent with the policy underlying the traditional exemption of MATV's from cable television regulation. See In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations With Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, FCC 77-205, 40 Rad. Reg.2d 571 (P&F) (the "MATV Order").

14. In the MATV Order, the Commission excluded MATVs from its "cable system" definition because "regulation of MATV systems has not been justified on grounds of their actual or potential harm to over-the-air-television," see MATV Order at paragraph 83. The Commission also said, at paragraph 86:

[11/] Notice at para. 42.

[12/] The traditional MATV definition also included the qualification that the multifamily buildings be under "common ownership, control or management." This qualification is of questionable constitutionality and should be avoided. Beach Communications, Inc. v. FCC, 965 F.2d 1103 (D.C. Cir. 1992), cert. granted, 61 U.S.L.W. 3400 (U.S. Nov. 30, 1992) (No. 92-15901).

> [W]e seek to establish . . . concepts of "amenity," convenience and even feasibility which serve to set [MATV] facilities apart from regulated (cable) facilities. By amenity we mean a lessor's or a manager's use of master antenna service as a secondary or incidental inducement to occupancy of his residential facility. By convenience, we are suggesting the efficiency and economy, even the aesthetics, of having a single, shared receptor rather than a forest of antennas on the roof of a multiple unit dwelling. By feasibility we refer to the realities of a television signal's shadowing and blocking when it must travel among highrise buildings, making a tall antenna - extending even far above a roofline - the only means of receiving service. Under such circumstances the erection of a high master antenna becomes not a competitive entry into something like cable television service but an almost necessary improvement to the business of leasing or selling dwellings.

15. When the Commission adopted the MATV Order fifteen years ago, it recognized that the use of MATV facilities does not change the dynamics of consumer access to broadcast stations.[13/] MATV facilities are still necessary today for the residents of most multifamily buildings to receive broadcast stations. Accordingly, MATVs should not be regarded as MVPDs nor should MATV systems be required to obtain retransmission consent from local broadcasters.

[13/] The Commission stated in the Notice at para. 2 that "[t]he mandatory carriage provisions essentially restored a type of obligation that was included in the Commission's rules from 1965 until 1985."

B. The Use Of MATV Facilities By SMATV Operators To Deliver Local Broadcast Signals Is Not "Retransmission."

16. The delivery of broadcast signals to the residents of multifamily buildings by an SMATV operator using MATV facilities is not "retransmission" of broadcast signals requiring retransmission consent under the Act. Instead, an SMATV operator is simply using MATV facilities to deliver broadcast signals to residents of a multifamily building -- the traditional use of an MATV. See MATV Order at paragraph 86. Likewise, the SMATV operator is not "retransmitting" broadcast signals over the MATV in the same manner as a cable operator who retransmits broadcast signals throughout the entire community.[14/] Accordingly, a SMATV operator should not need to obtain retransmission consent to use MATV facilities to deliver local broadcast signals in a multifamily building, notwithstanding the fact that SMATV systems are within the scope of the MVPD definition.

17. The Commission has, for many years, recognized the role of MATV facilities in delivering SMATV service. In Re: Earth Satellite Communications, 95 F.C.C.2d 1223 (1983), aff'd sub nom. New York State Commission on Cable Television v. FCC, 749 F.2d 804 (D.C. Cir. 1984), the Commission said, at paragraph 1:

[14/] Obviously, if a broadcast signal is delivered to an MATV by a "cable system," 47 U.S.C. § 522(6), the MATV system is part of the cable system and subject to the mandatory carriage and retransmission consent provisions.

> A SMATV system normally serves residents of private multiunit dwellings. It consists of a receive-only satellite earth station that provides premium programming signals transmitted to the receive station via satellite and a master antenna for the receipt of over the air television broadcast signals. These signals are combined and distributed through cable to subscribers residing in the multiunit dwellings.

C. If MATV Systems Are Exempt From The Retransmission Consent Obligations Of The Act, SMATV Operators Using MATV Facilities Should Also Be Exempt.

18. The rationale for exempting MATV facilities from having to obtain retransmission consent also applies to exempt a SMATV operator using MATV facilities to deliver local broadcast signals. The use of MATV facilities by SMATV operators does not adversely affect the delivery of broadcast signals in any way. Indeed, the use of MATV facilities by SMATV companies promotes the delivery of broadcast signals.[15/] Exempting the use of MATV facilities by SMATV operators from the retransmission consent requirement of the Act furthers the purpose of mandatory carriage and retransmission consent -- consumer access to broadcast signals. Indeed, imposing retransmission consent on the use of MATV facilities by SMATV operators could actually stifle the distribution of broadcast signals.

[15/] SMATV is the only alternative technology MVPD that routinely carries broadcast stations as part of its channel lineup. Neither MMDS nor DBS typically devote any channel capacity to broadcast stations because their consumers generally have

D. SMATV Operators Have Strong Incentives To Provide Access To Broadcast Stations Because SMATV Operators Do Not Compete With Broadcasters And Need Broadcast Signals To Be Competitive With Cable.

19. Under the Act, the only way MVPDs -- other than cable operators -- can retransmit broadcast signals is with the consent of the broadcast station. MVPDs -- other than cable operators -- do not have the right to retransmit broadcast signals pursuant to the Act's mandatory carriage requirement. This creates a real possibility that a broadcast station could either charge exorbitant rates to a SMATV operator or, even worse, enter into an exclusive agreement with a competing cable operator that precludes retransmission of its signal altogether by a SMATV competitor. Either of these options is grossly at odds with the Act's goals of promoting competition to cable systems and consumer access to broadcast stations.

20. Unlike cable operators, SMATV operators must carry broadcast stations to attract subscribers. SMATV subscribers are, by definition, the residents of multifamily buildings. These people invariably need to use the MATV facilities provided and maintained by the SMATV operator if they are going to receive any broadcast signals. Accordingly, SMATV operators have strong incentives to provide access to broadcast stations as part of their programming package.

21. Retransmission consent was enacted because cable operators have become major competitors of broadcasters.

> The Committee has concluded that the exception to section 325 for cable retransmission has created a distortion in the video marketplace which threatens the future of over-the-air broadcasting. Using the revenues they obtain from carrying broadcast signals, cable systems have been able to support the creation of cable services. Cable systems and cable programming services sell advertising on these channels in competition with broadcasters. While the Committee believes that the creation of additional program services advances the public interest, it does not believe that public policy supports a system under which broadcasters in effect subsidize the establishment of their chief competitors. . . . Cable television is now an established service.[14/]

22. Unlike cable operators, SMATV is not an "established service,"[15/] nor do SMATV operators sell advertising in competition with broadcasters. SMATV has been excluded from equity participation in cable programming services. Unlike cable, SMATV is simply not a competitor to broadcast services.

E. Summary And Alternative Solutions.

23. Congress did not intend, nor should the Commission allow, SMATV systems to be precluded from carrying broadcast signals.

[14/] S. Rep. No. 12, 102d Cong., 2d. Sess. 35 (1992).

[15/] Cable operators serve 60% of American households, while the alternative technologies serve less than 5%. H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 30 (1992).

Accordingly, the Commission should adopt a rule that retransmission consent is not required under the Act for the delivery of broadcast stations by means of MATV facilities, provided the MATV is not part of a cable system as defined in 47 U.S.C. §522(6).[16/] This rule would be consistent with the availability of the compulsory copyright license to SMATV because both rules promote consumer access to broadcast signals. Cable Compulsory License; Definition of Cable Systems. 56 Fed. Reg. 31,580 at 31,595-96 (1991) (to be codified at 37 C.F.R. pt. 201) (proposed July 11, 1991). (Copyright Office granted SMATV the compulsory license as a "cable operator" while recognizing that the Commission "treat[s] SMATV service as falling within the long established MATV exemption from its cable regulations").

24. In the alternative, the Commission should provide that if a broadcast station elects mandatory carriage of its signal by a local cable operator, the broadcast station will be deemed to have granted retransmission consent at no charge to a SMATV system operating in the same area. And, if the broadcast station enters into a retransmission consent agreement with the local cable operator, then the broadcast station must also grant carriage rights upon the same terms and conditions to a SMATV system operating in the same area.

[16/] This rule should not otherwise be affected by the manner in which the broadcast signal is delivered to the MATV; e.g., 18 GHz transmission.

25. Another alternative the Commission should consider is a "small cable system exemption" from the retransmission consent provisions which will allow small cable operators to continue carriage of broadcast stations. The small cable system exemption should also apply to small SMATV systems; i.e., those with three hundred subscribers or less.[17/]

26. If the retransmission consent provisions are construed literally and strictly, small cable operators, i.e., those with fewer than three hundred subscribers, face the same problem as SMATV operators in obtaining retransmission consent. The small cable operator is not included in the mandatory carriage provisions but is still required by the retransmission consent provisions -- if strictly construed -- to obtain broadcast stations' permission to carry their signals. Small cable operators generally serve rural areas, and, like SMATV operators, typically provide the only antenna service available to their subscribers. Small cable operators are not truly competitors of broadcast stations. Instead, they promote the delivery of broadcast services to their subscribers.

[17/] The Copyright Office intends to collect compulsory license fees for SMATV delivery of broadcast signals on a building by building basis. See Cable Compulsory License Definition of Cable Systems, 56 Fed. Reg. 31,580 at 31,595-96 (1991) (to be codified at 37 C.F.R. pt. 201) (proposed July 11, 1991). Accordingly, the small cable operator exemption should be applied to SMATV systems on a building by building basis.

III. Retransmission Consent Should Not Apply To Radio Stations And Superstations.

27. The retransmission consent provision should not apply to radio signals. The mandatory carriage and retransmission consent provisions were predicated on a detailed analysis of consumer choice among and between cable television and broadcast services. There is no evidence that radio stations need the same kind of protection from cable services that broadcast television stations need.

28. The Commission should make clear that retransmission consent does not apply to superstations delivered by satellite after May 1, 1991, regardless of which MVPD carried those signals. Any other rule makes the classification of superstations exempt from the retransmission consent requirement an ad hoc and arbitrary determination. For example, Liberty recently began (i.e., after May 1, 1991) the carriage of "superstations" that have been operating prior to May 1, 1991, and carried by Time Warner in New York City. Accordingly, there is no justifiable reason to exempt only Time Warner from obtaining retransmission consent from these superstations when Liberty is providing the identical services.

WHEREFORE, Liberty Cable Company, Inc. respectfully requests the Commission to adopt rules in this proceeding consistent with the views expressed herein.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.

By W. James MacNaughton
W. JAMES MacNAUGHTON III
90 Woodbridge Center Drive
Suite 610
Woodbridge, NJ 07095
(908) 634-3700

By Henry M Rivera
HENRY M. RIVERA
EDWIN M. LAVERGNE
Ginsburg, Feldman and Bress
Chartered
1250 Connecticut Ave., N.W.
Suite 800
Washington, D.C. 20036
(202) 637-9012

ATTORNEYS FOR LIBERTY CABLE
COMPANY, INC.

Dated: January 4, 1993

EXHIBIT 1

Affidavit of Peter O. Price

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TURNER BROADCASTING SYSTEM, INC.,	:	Civil Action Nos. 92-2247
	:	92-2292
Plaintiff,	:	92-2494
	:	92-2495
- against -	:	92-2558
FEDERAL COMMUNICATIONS COMMISSION, et al.,	:	
	:	
Defendants.	:	
	:	
AND CONSOLIDATED CASES	:	

AFFIDAVIT OF PETER O. PRICE
ON BEHALF OF AMICUS CURIAE
LIBERTY CABLE COMPANY, INC.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER O. PRICE, being duly sworn, deposes and says:

1. I am the President of Liberty Cable Company, Inc. ("Liberty"). I make this affidavit (a) in support of the motion by Liberty for leave to appear as an amicus curiae in these consolidated cases and (b) in opposition to the motions of Plaintiff Time Warner Entertainment Company, L.P. ("Time Warner") and other plaintiffs in these consolidated actions, to the extent they seek a preliminary injunction against Section 19 ("Section 19") of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").

2. Liberty seeks to appear as amicus curiae in these actions because Time Warner and others are seeking to enjoin Section 19 of the 1992 Cable Act. This section, including the regulations and procedures to be established under the section, was designed to foster competition in the cable industry -- and more specifically to provide recourse to businesses, such as Liberty, against anti-competitive barriers mounted by vertically integrated cable operators and programmers, such as Time Warner. As detailed below, Section 19 is not only constitutional, it is a desperately needed legislative response to the serious anti-competitive and unfair practices existing in the cable industry.

A. Liberty's Perspective On Section 19

3. Liberty is a satellite master antenna television ("SMATV") operator in the City of New York, where it currently services approximately 7,000 subscribers at dozens of sites in the metropolitan area. Liberty's franchised competitor in New York is Time Warner, which dominates the cable market in Manhattan through Manhattan Cable Television and Paragon Cable Manhattan and in the outer boroughs through B-Q Cable, QUICS and Staten Island Cable. New York City is the largest municipal franchisor of cable operators in the nation, and Time Warner serves more than 90% of the subscribers in New York City as well as customers outside the New York metropolitan area.

4. On a national level, Liberty is a leading implementer of technological alternatives to cable. To the best

of Liberty's knowledge, it is the only SMATV company in the country successfully overbuilding and competing head to head with a local franchised cable company. Liberty has built the largest 18 ghz microwave network in the United States and delivers its signal to many buildings via terrestrial microwave. Liberty will also be among the first video programmers in the United States to test "video dialtone" service and technology beginning in 1993. These emerging technologies have been heralded widely in the press. One of Section 19's primary and express aims is to ensure that businesses pursuing such new technologies will be able to compete fairly with entrenched cable operators, through reduction of the barriers imposed by vertical integration of cable operators and programmers.

B. The Injury That A Preliminary Injunction Against Section 19 Will Precipitate

5. If Section 19 is enjoined during these proceedings, it will prevent the FCC from considering public comment and from fashioning regulations that respond to the substantial economic goals that underlie the implementing legislation within the 180 day period mandated by statute. Liberty intends to participate with many other interested parties in that regulatory rule-making process, and expects Time Warner and the other plaintiffs to do the same. The Court should not allow Time Warner and the others seeking to enjoin Section 19 to delay this rule-making process.

6. Liberty is suffering injury on a daily basis. If Time Warner and others succeed in persuading this Court to grant a preliminary injunction, Liberty and others will continue to suffer real injury. This injury is not hypothetical. For example, cable companies owned or controlled by Time Warner now force Liberty to pay more than others for the same programming services. There is no apparent reason for this price discrimination other than the fact that Liberty is an SMATV company and a Time Warner competitor. This higher pricing has made it more difficult for Liberty to compete effectively with Time Warner. Liberty expects that Time Warner's anti-competitive conduct will be corrected by Section 19 and regulations promulgated thereunder and, on the other hand, will continue if Section 19 is enjoined.

7. In addition, Time Warner allows programming such as Court TV, which is produced by an affiliate of Time Warner, to be sold to all other cable and SMATV companies in the United States, but not Liberty. Indeed, Liberty's frustrated efforts to secure programming from Court TV are a prime example of the abuses of exclusive contracts that Section 19 would correct. In a discussion I had earlier this month with Steven Brill, the President of Court TV, Mr. Brill stated that Court TV's partner, Time Warner, wanted an exclusive in the New York market for its affiliates, Manhattan Cable and Paragon, and that Court TV "reluctantly" had agreed to Time Warner's request. Mr. Brill stated that he believed it was in Court TV's best interest to